

PERMIT AGREEMENT

No. 5390

This Permit Agreement, dated, for reference purposes only, as this 16th day of December, 2016, by and between the **COUNTY OF SAN MATEO**, a political subdivision of the State of California, ("County" or "Permitter") and **PENINSULA CORRIDOR JOINT POWERS BOARD (JPB)** ("Permittee"), is entered into subject to the following terms and conditions:

1. **PREMISES AND USE:** Permittee is hereby granted permission to use and occupy APNs: 039-087-020 and 039-086-020, located northwest and southwest of the intersection of 25th Avenue and South Delaware Street in the City of San Mateo, California, as shown on the attached Exhibit A and Exhibit B ("Premises"), for the purpose of construction staging, inclusive of a office trailer(s), while completing work for the 25th Avenue Grade Separation Project involving the construction of a grade separation at 25th Avenue, elevation of the rail between Hillsdale Boulevard and Highway 92, relocation of Hillsdale Station to provide station access and parking, and construction of East-West connections at 28th and 31st Avenues. No other use is allowed without prior consent of County.

2. **RELOCATION:** Permittee agrees during the term of the Permit to relocate any and all staged or stored materials or equipment of any kind, from APN: 039-087-020 (the property northwest of 25th Avenue) to allow County and the San Mateo County Event Center full use of APN: 039-087-020 for the County Fair and Maker Fair events which days are shown on the attached Exhibit C ("County Fair and Maker Fair Dates").

3. **IMPROVEMENTS AND MAINTENANCE OF IMPROVEMENTS:** Permittee shall maintain and repair the Premises at its sole cost. Permittee agrees to keep the Property in good and safe condition, free from waste and hazardous materials, so far as affected by Permittee's operations to the reasonable satisfaction of the County. If Permittee fails to keep the Premises in good and safe condition, free from waste or hazardous materials, then County may perform the necessary remediation work at the expense of Permittee, which expense Permittee agrees to pay upon demand.

4. **TERM:** This Permit shall commence September 1, 2017 and shall terminate upon completion of the 25th Avenue Grade Separation Project, but in no event later than September 1, 2021, unless otherwise agreed to in writing by the parties, in which case, the four year term will be revised. In no instance shall the term extend beyond September 1, 2023.

5. **NATURE OF PERMIT:** This Permit does not constitute the grant of a lease, deed, easement, or a conveyance or transfer of any property interest by County. Permittee acknowledges that County is entering into this License in its capacity as a property owner, and not as a regulatory agency.

6. **ASSIGNMENT:** This Permit is not transferable or assignable. Any such transfer or assignment without the consent of County shall be void from the time made.

7. **PERMIT FEE:** Permittee agrees to pay County a sum of FIVE HUNDRED AND FORTY-THREE THOUSAND, TWO HUNDRED AND FORTY-NINE DOLLARS (\$514,249.00) for use of the Premises as defined in Section 1 [Premises and Use]. The amount of the fee due pursuant to this Permit has been determined by an engineer's estimate of the cost to pave the Premises upon completion of the project. The sum shall be due in one lump sum within 45 days of Permit being duly executed.

8. **CHANGES, ADDITIONS OR ALTERATIONS:** Permittee agrees not to make any changes, additions, or alterations to the Premises or any part thereof, without first consulting with and obtaining the prior and specific written consent of County.

9. **REMOVAL OF IMPROVEMENTS UPON EXPIRATION OR TERMINATION.** Upon the expiration, or termination of this Permit for any reason, including but not limited to bankruptcy, Permittee shall immediately (and in no event later than ten (10) days after termination) remove from the Premises any and all property placed on the Premises by Permittee or any of Permittee's Agents. Such removal shall be performed in such a manner as to not interfere with the continuing use of the Premises by County, San Mateo County Event Center, or others. Permittee shall, at Permittee's sole expense, repair any damage to the Premises, or any facilities or equipment on the Premises,

caused by such removal or damaged by Permittee during the term. Upon any failure of Permittee to remove any other possessions of Permittee or Permittee's agents or representatives pursuant to this Section, County shall have the option, but not the obligation, to remove the possessions from the Premises and store the possessions, all at Permittee's expense, upon ten (10) days advance written notice to Permittee. Any damages to the Premises occasioned by such removal and storage are expressly waived by Permittee. Any possessions so removed will be returned to Permittee upon payment in full of all removal and storage costs. Notwithstanding the foregoing, any possessions not retrieved by Permittee within sixty (60) days after removal from the Premises by County shall be deemed abandoned by Permittee and shall become the property of County without further action by either party. Such abandonment shall not relieve Permittee of liability for the costs of removal and storage of the possessions.

10. **COSTS TO RECOVER PREMISES:** Permittee agrees to pay County all costs and expenses in any action brought by County to recover possession of the Premises or to enforce any rights of County hereunder.

11. **RELATIONSHIP:** County shall not become or be deemed a partner or joint venturer with Permittee by reason of this Permit or any provision hereof. Nothing in this Permit shall be construed to make Permittee an agent, employee, or department of County. Permittee warrants that it will not represent, directly or indirectly, to any person or entity, that it is a department, agent, or employee of the County of San Mateo or that it is performing any official function of County.

Permittee further understands and agrees that County is entering into this Permit in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Permit shall limit in any way Permittee's obligation to obtain any and all required approvals from applicable governmental agencies or commissions having jurisdiction over the Premises. By entering into this Permit, County is in no way modifying or limiting Permittee's obligation to cause the Premises to be used and occupied in accordance with all applicable laws and regulations.

12. **LICENSES:** Permittee shall secure any and all necessary licenses, permits and approvals applicable to the use of the Premises for which this Permit is granted. Permittee acknowledges and agrees that the Premises are being accepted in "AS IS" condition, without representation or warranty of any kind, and subject to all applicable laws, rules and ordinances governing the use, occupancy and possession thereof. Permittee acknowledges and agrees that neither County nor any of its agents have made, and County hereby disclaims, any representations or warranties, express or implied, concerning the physical or environmental condition of the Premises or the Property, the present or future suitability of the Premises for Permittee's intended use, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

13. **LICENSE, FEES, AND TAXES:** Permittee shall be liable for, and shall pay throughout the term of this Permit, any license fees and taxes, including possessory interest taxes, if any, covering its use of the Premises.

14. **RESERVATIONS:** This Permit is subsequent to and subject to all prior exceptions, reservations, grants, leases, easements, or licenses of any kind whatsoever as the same appear on record in the San Mateo County Recorder's Office, or in the other public records of County.

15. **LAW AND REGULATIONS:** Permittee shall at all times maintain, occupy, use, and improve the Premises in compliance with all laws, rules, regulations which may be applicable thereto, including but not limited to storm water runoff and environmental regulations.

Permittee shall not allow any offensive or refuse matter, nor any substance constituting an unnecessary, unreasonable or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Premises.

16. **INDEMNIFICATION:** Permittee agrees to indemnify and save harmless County, its officers, and employees from all claims, suits, or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property of any kind whatsoever and to whomsoever belonging, from any cause or causes whatsoever while in, upon or in any way connected with, the Premises during the term of this Permit or any extension hereof except with respect to APN: 039-087-020 during any period of relocation under Section 2 hereof.

The duty of the Permittee to indemnify and save harmless, as set forth hereinabove, shall include the duty to defend as established in Section 2778 of the California Civil Code.

17. **WORKERS' COMPENSATION AND EMPLOYER LIABILITY INSURANCE:** During the entire term of this Permit, and any extension hereof, Permittee shall have in effect Workers' Compensation and Employer Liability Insurance providing full statutory coverage for all its employees. In signing this Permit, Permittee makes the following certification:

I/We am/are aware of the provisions of Section 3700 of the California Labor Code which require every employer (1) to be insured against liability for Workers' Compensation or (2) to undertake self-insurance in accordance with the provisions of the Code. I/We will comply with such provisions.

18. **LIABILITY INSURANCE:** Permittee shall obtain at its sole expense, and furnish evidence to County prior to the effective date of this Permit of a combined general liability and property damage insurance policy in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, to be kept in full force during the term of this Permit and any extension hereof.

County, its officers, agents and employees shall be named as additional insured on the liability insurance policy required hereinabove, which shall also contain a provision that the insurance afforded thereby to County shall be the primary insurance to the full limits of liability of the policy. If County has other insurance coverage against a loss covered by the coverage that Permittee is required to have, such other insurance coverage of County shall be excess insurance only.

19. **NONDISCRIMINATION:** Permittee acknowledges and agrees that no person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under this Permit on account of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Permittee shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Permittee shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Permittee that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Permittee shall provide County with a copy of its response to the Complaint when filed.

With respect to the provision of employee benefits, Permittee shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

20. **TERMINATION:** County shall have the right to terminate this Permit at any time for cause in the event of breach or default by serving written notice on the other party at least thirty (30) days in advance of termination.

21. **RIGHTS ON DEFAULT:** If Permittee fails to perform an obligation under this Permit, then unless Permittee promptly rectifies, or commences to rectify, the default, Permitter may, at Permitter's sole discretion, upon written notice to Permittee, take any or all of the following action:

- a. Perform such obligation, in which event the cost thereof becomes immediately due and payable by Permittee to Permitter; and/or
- b. Terminate this Permit.

If the nature of Permittee's default is such that more than thirty (30) days are reasonably required for cure thereof, then Permittee shall not be in default if Permittee shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

22. **NOTICES:** Any notice to be given hereunder shall be by U.S. Certified Mail, prepaid, and addressed to the parties hereto, or personally delivered to, as follows:

County: County of San Mateo
County Manager's Office
Real Property Division
455 County Center, 4th Floor
Redwood City, CA 94063

Permittee: Peninsula Corridor Joint Powers Board
c/o San Mateo County Transit District
1250 San Carlos Ave.,
San Carlos, CA, 94070-1306

23. **HAZARDOUS MATERIAL.** Permittee covenants and agrees that neither Permittee nor any of its Agents or Invitees shall cause or permit any hazardous material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises, or transported to or from the Premises, with the sole exception that Permittee may keep and use such substances on the Premises in such reasonably limited amounts as are customary for the use authorized in Section 1 [Premises and Use] hereof so long as such use is in compliance with all applicable Environmental Laws at all times and all such hazardous materials are completely removed upon termination or conclusion of this Permit. Permittee shall give immediate written notice to County of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Permittee with respect to the presence or release or suspected presence or release of hazardous material on the Premises or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened by any third party against Permittee relating to any loss or injury resulting from any hazardous materials on the Premises or Property; (c) any release of hazardous material on or about the Premises or any other part of the Property that has occurred and may require any investigation or remediation; and (d) all matters of which Permittee is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

Permittee shall be responsible for investigating and remediating any environmental contamination whatsoever caused by Permittee on the Premises. Notwithstanding anything to the contrary in this Permit, this provision shall survive termination.

24. **SUCCESSORS IN INTEREST:** All of the provisions in this Permit apply to and bind the heirs, successors, executors, administrators and assigns of both parties hereto, both of whom shall be jointly and severally liable hereunder.

25. **ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing executed by both parties.

26. **AUTHORIZED REPRESENTATIVE OF COUNTY OF SAN MATEO:** The County Manager shall be the authorized representative of County for purposes of giving any notices or exercising any rights, options or privileges of County in this Permit, including the right to terminate this Permit or to grant Permittee permission to make changes, additions or alterations in the Premises.

The parties hereto have executed this Permit in triplicate on the day and year first above written.

Each party executing this Permit acknowledges receipt of a copy hereof.

PENINSULA JOINT POWERS BOARD

DATE: 8/11/17
Approved as to form: [Signature]

Michael Conneran

BY: [Signature]

Jim Hartnett
Executive Director

COUNTY OF SAN MATEO

DATE: _____

BY: _____

Don Horsley,
President, Board of Supervisors

Exhibit A



Exhibit B



Exhibit C

County Fair and Faire Maker dates for APN 039-087-020 (JPB-SM-0052)

Material and equipment may be stored within Parcel JPB-SM-0052 at the northwest corner of South Delaware and 25th Avenue intersection in San Mateo. Material and equipment must be removed from the Parcel prior to and during the following dates:

May 17, 2018 through May 21, 2018; June 8, 2018 through June 11, 2018; and June 15, 2018 through June 18, 2018.

May 16, 2019 through May 20, 2019; June 7, 2019 through June 10, 2019; and June 14, 2019 through June 17, 2019.

May 14, 2020 thru May 18, 2020; June 5, 2020 through June 8, 2020; and June 12, 2020 through June 15, 2020.